

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

UNITED STATES OF AMERICA,)
)
Plaintiff,)
) No. 4:18 CR 00975 CDP (JMB)
v.)
)
DUSTIN BOONE,)
RANDY HAYS, and)
CHRISTOPHER MYERS,)
)
Defendants.)

GOVERNMENT'S SUMMARY OF EXPECTED EXPERT TESTIMONY

COMES NOW the United States of America, by and through its attorneys, Sayler A. Fleming, United States Attorney for the Eastern District of Missouri, and Carrie Costantin and Robert F. Livergood, Assistant United States Attorneys for said District, and submits the following summary pursuant to Rule 16(a)(1)(G) of the Federal Rules of Criminal Procedure.

1. The Government expects that Daniel Ogden, the Deputy Director of the U.S. Department of Justice, Computer Crimes and Intellectual Property Section, will testify concerning his forensic examination of cell phones and cell phone backups. Deputy Commander Ogden will base his testimony on and his qualified to testify as such, due to his training and experience. He is a Certified Mobile Device Examiner, a Cellebrite Certified Mobile Examiner, and holds many forensic examiner certifications. Since September 2015 he has been the Deputy Director of the U.S. Department of Justice Computer Crimes and Intellectual Property Section. He is also a Senior Contractor Trainer for Cellebrite. He was previously a forensic examiner with

the Brevard County Sheriff's Office, in Rockledge, Florida. He has a Master of Science degree in Digital Forensics from the University of Central Florida, and a BA in Criminal Justice Administration from Columbia College of Missouri.

It is anticipated that Deputy Commander Ogden will testify regarding his forensic examinations of Christopher Myers' cell phone, Dustin Boone's cell phone, and Dustin Boone's iCloud backup of his cell phone. Deputy Director Ogden will testify about the methods and procedures he used to extract data from the items. He will testify that he used Cellebrite so that the extracted data could be viewed on UFED Reader. The extracted data and UFED Reader have been made available to the defense.

Deputy Commander Ogden is expected to testify that the extracted data includes text messages in the form of SMS messages, MMS messages, instant messages, and iMessages (for the iPhones and iPhone backup). Deputy Commander Ogden is expected to testify that the extracted data also included data pertaining to calendars, contacts, emails images, videos, carved data, and other data.

2. The Government expects that Eric Kerr, Special Agent with the Federal Bureau of Investigations, will testify concerning his forensic examination of Dustin Boone's cell phone and the cell phone iCloud backup. He became a Special Agent in July 2019. Prior to becoming a special agent, SA Kerr was a Forensic Examiner with the FBI's Computer Analysis Response Team (CART). SA Kerr will base his testimony on and is qualified to testify as such, due to his training and experience in forensic examinations. He has been certified as a Digital Evidence Extraction Technician, a Certified Forensic Examiner; a Certified Forensic Analyst, and holds several other forensic examiner certifications. He holds a Master of Professional Studies Degree

from Pennsylvania State University and a Bachelor of Science Degree in Information Systems from Illinois State University. SA Kerr has conducted forensic examinations of approximately 750 devices, of which nearly half were cellular phones.

It is anticipated that SA Kerr will testify regarding his forensic examination of Dustin Boone's cell phone, and Dustin Boone's iCloud backup of his cell phone. SA Kerr will testify about the methods and procedures he used to extract data from Dustin Boone's iPhone. He will testify that he used Cellebrite so that the extracted data could be viewed on UFED Reader. The extracted data and UFED Reader has been made available to the defense.

It is anticipated that SA Kerr will testify that the extracted data included text messages in the form of SMS messages, MMS messages, instant messages, and iMessages. It is anticipated that SA Kerr will testify that the extracted data also included data pertaining to calendars, contacts, emails images, videos, carved data, and other data.

3. The Government expects to present the testimony of Tiffany Smith of the Federal Bureau of Investigation (FBI), who by virtue of her training and experience is an expert in DNA analysis. Ms. Smith will testify consistent with her reports previously disclosed to counsel for the defendants. She has been employed by the FBI since August 2010 as a Biologist-Forensic Examiner. Her duties include the examination and analysis of items for the presence of DNA and the comparison of unknown DNA samples to known DNA samples.

Ms. Smith has a Bachelor of Science degree from West Virginia University in Forensic and Investigative Sciences and a Masters of Science degree from West Virginia University in Biology. Ms. Smith has also received extensive specialized training from the FBI concerning DNA testing and probability including PACE: Rapid and Automated Artifact Identification and

Number of Contributor Prediction, Validation and Tutorial of NOCIt for Determining Number of Contributors, Probabilistic Genotyping Summation and Special Topics, Quality Assurance Standards Auditor Training, Overview of NGS Chemistries and Platforms. A listing of her training is contained in her C.V. which was previously provided to defense counsel. She has also provided professional training concerning DNA analysis to the FBI and others.

Ms. Smith has testified over 25 times in the last four years concerning DNA or serology results in state and federal court.

Ms. Smith will testify that, based on the examination and analysis performed at the FBI laboratory, blood was found on the cell phone provided by L.H. and it contained a mixture of DNA. The DNA results are 2.8 decillion times more likely if L.H. and an unknown, unrelated person are contributors than if two unknown, unrelated people are contributors. Statistically, this is a very strong case for inclusion; that is, that the DNA is from L.H. The low level of DNA from the other contributor prohibits any meaningful comparison to any other person. Ms. Smith's opinions are based on her education, training and experience.

4. The Government expects to present the testimony of Dr. Jacob Buchowski to testify concerning his medical examination of L.H. and his orthopaedic surgery on L.H.'s spine. These findings are contained in L.H.'s medical examination records. Copies of those reports have previously been provided to defense counsel.

Dr. Buchowski is the Lawrence G. and Elizabeth A. Lenke Distinguished Professor of Orthopaedic Surgery, Professor of Neurological Surgery, Vice-Chair and Chief of the Spine Division at Washington University School of Medicine in St. Louis, Missouri. He is a board-certified specialist in complex reconstructive spine surgery of the cervical, thoracic and lumbar

spine.

Dr. Buchowski earned his Bachelor and Master of Science degrees in molecular biophysics and biochemistry from Yale University and his medical degree from The Johns Hopkins University School of Medicine. He completed a residency in orthopaedic surgery at Johns Hopkins, where he served as administrative chief resident. He was fellowship trained in adult and pediatric spine surgery in the Department of Orthopaedic Surgery at Washington University School of Medicine. He is a diplomate of the American Board of Orthopaedic Surgery.

Dr. Buchowski will testify that when he examined L.H. in 2018, he had pain in his neck and shoulder. The neck pain radiated to his upper extremities. The symptoms began after he was assaulted while working undercover. MRIs showed disc herniation and protrusion at C4 and C5 and degenerative injury at C5 C6. Before surgery, L.H. had tried physical therapy, steroid injections and medication but to no avail. Dr. Buchowski performed surgery in October 2017 and replaced the herniated disk with a bone from a cadaver. He will testify that symptoms from disc herniation may not be seen until several days after the injury. He will testify that, given the medical history and his examination, it is a reasonable conclusion that the disc herniation resulted from the assault.

5. The Government expects to present the testimony of FBI Photographer Marcus Burzota to testify concerning his lightening of photographs taken by Lawrence Bryant, his lightening of stills from the cell phone video taken by L.H., his photographs of the area of the northeast corner of Olive Street and 14th Street and a diagram of that area, and his synching of the RTCC video, the cell phone video and the Bryant photographs. These items have all been

previously produced to defense counsel. If a more detailed diagram of the corner is produced, a copy will be promptly provided to defense counsel.

Mr. Burzota has been an FBI Field Photographer since 2011. He has a Bachelor's degree in Mathematics from Greenville College and a Master's degree in Applied Mathematics from Southern Illinois University-Edwardsville. His Master's thesis was on Digital Image Compression using Wavelets.

Mr. Burzota has attended numerous trainings through the FBI, including on the following topics: Digital Image and Video Recovery Team, StarWitness Video Evidence Analysis, ERT Basic Training, Crime Scene Photography, Advanced Crime Scene Photography, Surveillance Photography, Photoshop and Premiere Pro training, and Adobe Software training. He is skilled in the use of StarWitness Signalscape Forensic Video Software, Adobe Photoshop image editing software, Adobe Premiers Pro video editing software, Adobe Lightroom photo editing and organizing software, Camtasia screen recorder and video editor. He has trained local law enforcement on crime scene photography. A listing of his training is contained in his C.V. which was previously produced to defense counsel.

This Disclosure of Expert Witnesses also serves as the Government's renewed request for notice of expert testimony by the Defendants, pursuant to Federal Rule of Criminal Procedure 16. Specifically, the Government requests that the Defendants disclose to the Government a written summary of testimony that the Defendants intend to present at trial pursuant to Federal Rules of Evidence 702, 703, and 705.

Respectfully submitted,

SAYLER A. FLEMING
United States Attorney

/s/ Carrie Costantin

CARRIE COSTANTIN, #35925MO
ROBERT F. LIVERGOOD, #35432MO
Assistant United States Attorney
111 S. 10th Street, Ste. 20.333
Saint Louis, MO 63102
(314) 539-2200

CERTIFICATE OF SERVICE

I hereby certify that on February 12, 2021, the foregoing was filed electronically with the Clerk of the Court to be served by operation of the Court's electronic filing system upon counsel of record.

/s/ Carrie Costantin

CARRIE COSTANTIN, #35925MO
Assistant United States Attorney